

## **The complaint**

A company which I'll call 'M' complains that WorldPay (UK) Ltd treated them unfairly when dealing with their merchant services account.

The complaint is brought on M's behalf by one of their directors, Mr S.

## **What happened**

M had an agreement with WorldPay for it to provide the company with merchant services.

M told us:

- They made a complaint to several people in WorldPay in 2019 but it denied having any record of this complaint. WorldPay says there is no record of the calls and when it did finally log a complaint, the response was poor, and they were treated as an inconvenience.
- They had a chargeback made against them for £1,680 in September 2019 which WorldPay hadn't defended – despite being provided with evidence that the transaction had been undertaken by the cardholder who had simply changed their mind.
- WorldPay wouldn't allow them to undertake a refund for a customer as it said the card hadn't been used – despite this appearing on their statement. Mr S had to refund this from his personal credit card which has caused him to incur interest. They were blocked from making refunds for three months and accused of fraud.
- The company specifically took out the agreement with WorldPay as their merchant service provider as it allowed pre-authorisation so they could take deposits from their customers. However, despite repeated assurances WorldPay haven't been able to set this up correctly, so they can't charge their customers for any damage they cause and have therefore incurred a financial loss and breached the terms of their own insurance.
- WorldPay hasn't recorded all their account transactions correctly and has refunded many without their knowledge, including a payment for £2,000 six weeks after it took place. They complained to WorldPay who say this is a payment terminal issue, and won't refund the card charges for these payments either as it says these are valid transactions
- Their card terminal was faulty, and it took WorldPay 18 months to send them a replacement.
- They repeatedly tried to change their address with WorldPay without success.
- They repeatedly received calls from WorldPay's compliance team despite telling it

that they won't provide any information until it resolves their complaints. They want any charges incurred from WorldPay because of any compliance delays, refunded.

- Their charging tariff was changed without warning. They were told the new tariff was beneficial, and if at any point that wasn't the case, it would revert to the original tariff – but that hadn't happened.

WorldPay told us:

- It didn't think we could consider M's complaints for which the company had received Final Response Letters (FRL) in 2021, as these complaints hadn't been brought to our service in time.
- It had reviewed M's account, applied a settlement deferral, and removed M's ability to apply refunds to protect itself from any potential or anticipated liabilities which M may incur. This was in line with the agreement terms and conditions.
- There was no record that M had asked it over the phone to change their address. However, if a call had been received, it would've told M they needed to complete a form and send this to its postal address in line with its process.
- It couldn't see any evidence that the compliance team had contacted M (as many different departments could call under this term). However, if it had done so, M would be obligated to respond to any requests in line with the terms of the agreement.
- The pre-authorisation functionality had been available to M from when the company had taken out the agreement until it had closed.
- It had changed M's tariff as they were breaching the original tariff's fair use policy. It had given M two months' notice of this change, and the company could have exited the agreement without charge during the notice period if they were unhappy.

Our investigator thought that M's complaint was in two parts. He didn't think we could consider the parts of M's complaint that had been covered in the FRL's they'd received in 2021, as the company hadn't brought those complaints to our service until February 2023 – so they'd been brought too late.

He thought that we could consider the complaints that M had made to WorldPay in 2022, but didn't recommend the complaints be upheld. In summary, the investigator thought it was reasonable for WorldPay to place restrictions on M's account whilst it was undertaking a review of their account in line with its regulatory obligations. He said there was no evidence that M had asked WorldPay to change their address over the phone, but even if it had, WorldPay couldn't accept this as the request had to be submitted in writing. He also said there was no evidence that M had contacted WorldPay in 2019 to raise a complaint.

Our investigator thought WorldPay had behaved reasonably when changing M's account tariff as the company had breached the existing tariff's fair use policy, and WorldPay hadn't been able to contact M to discuss this. He also said he was satisfied that this variation had saved M money since it had been changed.

M didn't agree. They said WorldPay admitted they had made an error with a transaction which meant the company couldn't refund it and was subsequently accused of fraud over a nearly three-year period. They were also unhappy that WorldPay had been issuing refunds from their account, which they couldn't claim back, and that our service said it couldn't look

into this. M also didn't agree that WorldPay had behaved reasonably with the account reviews, or that it had no records of the complaints they'd raised. So, they asked for an ombudsman to review their complaint and the case has been passed to me to decide.

I issued a provisional decision on 2 April 2024. I said the following:

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

Both parties have provided me with a lot of information, and I want to reassure them that I've reviewed everything, but I've only commented on what I feel are the key things for the complaint. This means I need to decide exactly what M's complaint is, and what I can consider. And I think broadly there are two different groups of complaint points here:

- M's complaints which happened before 1 March 2022.
- M's complaints which happened after 1 March 2022
- WorldPay's general complaint handling

*The complaints about events that happened before 2022 – which I can't consider:*

- The £1,680 chargeback in September 2019 which WorldPay didn't defend.
- WorldPay not recording all M's transactions correctly and applying refunds which the company weren't aware of - including the reversal of a £2,000 payment
- M's faulty card terminal and the unreasonable time it took for WorldPay to provide a replacement.

The extent of my powers to consider complaints is set by the industry regulator the Financial Conduct Authority (the FCA), in the Dispute Resolution (DISP) rules - in particular DISP Rule 2.8.2R which says:

"The Ombudsman cannot consider a complaint if the complainant refers it to the Financial Ombudsman Service:

(1) more than six months after the date on which the respondent sent the complainant its final response; ... unless

(3) in the view of the Ombudsman, the failure to comply with the time limits [above] was as a result of exceptional circumstances; or ...

(5) the respondent has consented to the Ombudsman considering the complaint where the time limits [above] have expired".

For M's first complaint about the £1,680 chargeback, I can see that WorldPay issued an FRL dated 8 January 2021. For the second complaint about the refund of the £2,000 transaction and transactions not being recorded correctly, I can see that WorldPay issued an FRL dated 15 March 2021. And for the third complaint about M's faulty card terminal and the time taken to replace it, I can see that WorldPay issued an FRL on 1 September 2021. But M didn't refer these complaints to us until 12 February 2023 – more than six months later. So, these complaints have been made too late. WorldPay hasn't consented, which means I'd only be able to consider M's

complaints about these issues if they failed to comply with the time limit due to exceptional circumstances.

M says that it's unfair that WorldPay didn't respond to their complaints for several years and then only responded to one point at a time. They believe that WorldPay's handling of complaints should be treated as an exceptional circumstance. However, I don't agree. M was able to discuss their ongoing complaint points with WorldPay, and I've seen that each of the FRL's clearly gave referral rights to our service. So, I haven't seen anything that would have prevented M bringing their complaints to our service. Therefore, I'm not persuaded there were exceptional circumstances in this case, which means I don't have the power to consider M's complaint points for which WorldPay issued its FRL's in 2021.

I recognise Mr S and the other directors were unhappy when our investigator said he couldn't look at these complaints. However, we don't have any discretion when it comes to jurisdiction, the six-month timescale for bringing a complaint is set out in the DISP rules. This means that I simply cannot look at these parts of M's complaint.

*The complaints about events that happened after 2022 – which I can consider:*

- WorldPay not providing a pre-authorisation facility as expected, despite assurances that this issue would be resolved.
- WorldPay unfairly preventing M from refunding their customers for around three months which meant Mr S had to refund a large payment personally which incurred interest costs.
- WorldPay not actioning M's repeated requests to change the address on their account.
- Unsolicited and repeated calls from WorldPay's compliance team.
- Unfair changes made by WorldPay to M's charges tariff along with misleading information about the changes.
- M's requests to WorldPay to raise a complaint in November 2019, which it denies.

M told us that WorldPay treated them unfairly because it has failed to set up a pre-authorisation facility, despite repeated reassurances over a significant period. Therefore, WorldPay's actions have caused M a financial loss as they can't take security deposits without this functionality. Although I don't have any reason to doubt what M has told us, neither party has been able to provide evidence of any calls from M raising this as a concern. So, it's difficult for me to fairly say that WorldPay didn't respond to M's issue.

However, WorldPay has provided evidence to show that the pre-authorisation function was available to M, and a step-by-step process of how this would've worked and what M would've seen. So, I'm satisfied that M did have the pre-authorisation functionality they required on their terminal and that this was provided by WorldPay. Although, I acknowledge that M told us they had issues with their terminal and this may have affected the pre-authorisation functionality, I can't comment on this complaint point further as it wasn't brought to our service in time. But I think that if M hadn't cancelled their contract with WorldPay that it would've been able to resolve this issue.

Mr S says that WorldPay behaved unreasonably as it blocked M from making refunds to their customers for three months, and accused the company of fraud. He also says that this meant he had to personally refund M's customers and he'd therefore incurred interest as a result of this. However, I don't think WorldPay has done anything wrong. I say this because the terms of M's agreement with WorldPay allow it to withhold refunds at its discretion. These terms further say that WorldPay can take this action if it reasonably believes that a transaction is fraudulent. It's common for merchant service providers to restrict chargebacks and refunds whilst they carry out investigations, so they aren't left with a liability if a merchant can't make those payments. So, I don't think this was unfair of WorldPay.

I've also looked at WorldPay's records and the actions it took, I can see that it needed to undertake a review of M's account and it restricted their refunds after it had undertaken this review. Whilst I recognise that this took longer than M would've liked, and would have caused the company inconvenience, I don't think WorldPay behaved unreasonably here. I recognise that M may wish to know more about WorldPay's decision, however, DISP rule 3.5.9(R) allows me to accept commercially sensitive evidence in confidence. We've agreed this with WorldPay therefore I won't be commenting further on the specific evidence it has provided regarding this point. However, I'd like to reassure M that I'm persuaded by WorldPay's rationale behind this decision.

M told us that they had received repeated unsolicited calls from WorldPay's compliance team, which was unfair, particularly as it hadn't dealt with their complaints first. But I don't think these things are mutually exclusive. Even if WorldPay was reviewing the complaints that M had made, I'm not persuaded this would prevent it asking M for information to complete its compliance review – particularly as this may at times be needed to progress a complaint. However, even though that's not the case here, I don't think it's unreasonable for WorldPay to contact M if it requires information from the company.

WorldPay has legal and regulatory obligations that it needs to meet, so if it needs information from M to enable it to do this, it's fair for it to make contact. Furthermore, the terms of M's agreement with WorldPay say that the company "will comply promptly with all requests for information". So, by refusing to do so, M has breached the terms of the agreement and WorldPay could, if it wishes, take steps to terminate the agreement – and it would be fair for it to do so as M has decided to decline WorldPay's requests.

M also told us that WorldPay has treated them unfairly as it has changed their charging tariff and mislead them about the positive impact this would have on the company. But I don't agree. I've looked at M's charging tariff and I can see that this clearly says the pricing is subject to M meeting the tariff's 'Fair Use Policy' ('FPU'). The FPU says that if this is breached, WorldPay can move a customer to a higher usage band if the over-usage is 20% or more, or if its 40% over-usage or more, it can either apply a 2% retrospective top-up fee or change the pricing plan. Here, I can see that WorldPay contacted M by phone and also by email in April 2019 to say that they were breaching the terms of the fair use policy, and subsequently changed M's pricing plan accordingly from July 2019 – after the two-month notice period. I think that was reasonable.

I acknowledge M feels the WorldPay gave them misinformation about the benefits of the new charging tariff. Although WorldPay hasn't been able to provide any calls with M, I can see from the charges the company has incurred why they may believe that's

the case. I say that because I've looked at the charges M incurred for 2019, and it appears that they would've been better off by around £780 if they'd been on the original plan.

However, the issue here is that M wasn't actually eligible for the original plan, as they had breached the fair use policy. So even if WorldPay did give incorrect information here, M wasn't eligible to change at that point. But in any event, I've seen that for 2020, 2021 and up to November 2022, M was better off by around £1,040. So, I'm satisfied that the change that WorldPay made to M's charging tariff did benefit the company. I think it's also worth noting that M told us that their business is seasonal, and the agreement tariffs make clear on the front page that the tariff M was originally on, wasn't suitable for seasonal businesses.

Furthermore, I've also seen that the terms of M's agreement with WorldPay say that it can vary the terms of an agreement by giving notice (as it did here), but in the event a customer isn't happy with these changes, they can exit the agreement without charge, provided they give written notice within that two-months. So, I don't think WorldPay treated M unfairly here when it varied their agreement and changed their charging tariff.

I recognise that M says WorldPay didn't action their change of address request, even though they'd made many attempts to do so. However, WorldPay says that it has no record of M's request to change their address over the phone. But even if it did, I'm not persuaded it makes a difference here. I say this because the terms of M's agreement with WorldPay say that it needs notifying in writing if the company change their address. So even if M had spoken to WorldPay, I think it's likely it would have asked M to put this in writing so it could action the company's request. And I haven't seen any evidence from either party that a request has been sent in writing, so I can't fairly say WorldPay did anything wrong by not actioning M's change of address requests.

### *Complaint handling*

M says that WorldPay behaved unreasonably because it didn't set up a complaint for them, despite them raising this over the phone and with specific people. I recognise that Mr S says that he has call recordings from November 2019 which evidence the calls were made, and WorldPay's poor behaviour here. I'm sorry to disappoint Mr S as I know he feels strongly about this, but complaint handling isn't an activity that falls within our jurisdiction. Therefore, I can't look at the bank's lack of response to M's complaint, or whether or not it was actioned correctly.

I recognise that Mr S and the other directors will be unhappy with my outcome here, but I don't think WorldPay has treated M unfairly or behaved unreasonably. Therefore, I won't be asking it to do anything more.

I invited M and WorldPay to give me any more evidence and information they wanted me to consider before issuing my final decision. WorldPay responded to say it had nothing further to add. M didn't agree with the provisional decision. They said in summary:

- It wasn't reasonable for WorldPay to accuse Mr S of fraud and say this was because of regulatory obligations nearly three years later.
- It wasn't fair for them to be prevented undertaking refunds for three months, nor was it reasonable to expect the company to review all their transactions on the basis that WorldPay may decide to refund them – sometimes months later.

- It was unreasonable that they couldn't appeal against the original chargeback which WorldPay didn't defend, WorldPay also shouldn't be able to take 1051 days to provide a response to the company.
- WorldPay should review their tariff every three months and adjust this accordingly as it said it would.
- They didn't have the ability to do pre-authorisations, and this had been raised with their account manager (who I'll call Mr P) along with the faulty terminal and numerous other complaints. Had he done his job correctly, M wouldn't have had so many complaints.

### **What I've decided – and why**

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

Having done so, I've reached the same conclusion as I did in my provisional decision.

I've considered Mr S's further comments as to why he believes WorldPay has behaved unreasonably, but he hasn't said or provided anything that leads me to a different view of this. I still think WorldPay behaved reasonably in reviewing M's account and providing the restrictions that it did. I also recognise that Mr S is unhappy that WorldPay didn't review M's charging tariff as it said it would, but as M wasn't eligible for the original tariff that they applied for, for the reasons already given in my provisional decision. And, as I also mentioned, M has benefitted financially from being on the tariff that has been applied here.

Mr S says that WorldPay has been allowed to hide behind its terms and conditions and lied about M's ability to undertake pre-authorisations. I acknowledge Mr S is frustrated at WorldPay's actions, but I'm satisfied with the evidence provided that WorldPay acted reasonably and did provide M with the ability to undertake pre-authorisations. I understand Mr S disagrees with what WorldPay has said and the evidence it has provided, but my role is to make a fair and impartial decision based on the information provided by both parties, and I'm satisfied I have done so here.

I recognise that Mr S feels strongly about this complaint and is frustrated about the lack of service he says M received from WorldPay, and Mr P in particular. However, I am simply unable to comment about the complaints raised prior to 2022 as the DISP rules don't allow me to do so, and complaint handling isn't an activity we cover – so I can't make a finding on whether WorldPay should have provided quicker, or indeed different responses to M's complaints. So, my final decision remains the same as that of my provisional decision.

### **My final decision**

My final decision is as follows:

- The Financial Ombudsman Service cannot consider M's complaints about the £1,680 chargeback in September 2019 which WorldPay didn't defend, WorldPay not recording all M's transactions correctly and applying refunds the company weren't aware of (including the reversal of a £2,000 payment), M's faulty card terminal and the time it took for WorldPay to provide a replacement, because those complaints were referred to us too late.

- We can't consider M's complaint about the way WorldPay handled its later complaints, because that isn't an activity covered by our service.
- I don't uphold the remainder of M's complaints.

Under the rules of the Financial Ombudsman Service, I'm required to ask M to accept or reject my decision before 17 May 2024.

Jenny Lomax  
**Ombudsman**